(24)

No. 90-1912

In The

Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County and the COUNTY OF LOS ANGELES,

Respondents.

On Writ Of Certiorari To The Court Of Appeal Of The State Of California

BRIEF OF GOVERNOR PETE WILSON, UNITED STATES SENATOR JOHN SEYMOUR, UNITED STATES REPRESENTATIVES TOM CAMPBELL, CHRISTOPHER COX, ROBERT K. DORNAN, RON PACKARD AND DANA ROHRABACHER, THE CALIFORNIA STATE SENATE REPUBLICAN CAUCUS, THE CALIFORNIA STATE ASSEMBLY REPUBLICAN CAUCUS, STATE ASSEMBLY MEMBERS BILL JONES, DEAN ANDAL, PAULA L. BOLAND, CHRIS CHANDLER, B.T. COLLINS, GERALD N. FELANDO, BILL FILANTE, NOLAN FRIZZELLE, BEV HANSEN, PAUL V. HORCHER, DAVID G. KELLEY, BILL LANCASTER, STAN STATHAM AND CATHIE WRIGHT, AND FORMER STATE ASSEMBLYMAN CHARLES BADER AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Are the property-by-property tax limitations and the acquisition value tax classification established in Article XIIIA reasonably related to the legislative purposes of providing all property owners with certain, predictable and limited property taxes during the period of their ownership, so that there is a rational basis for the distinctions employed in Article XIIIA?

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Pursuant to Supreme Court Rule 37, Governor Pete Wilson, United States Senator John Seymour, United States Representatives Tom Campbell, Christopher Cox, Robert K. Dornan, Ron Packard and Dana Rohrabacher, the California State Senate Republican Caucus, the California State Assembly Republican Caucus, State Assembly Members Bill Jones, Dean Andal, Paula L. Boland, Chris Chandler, B.T. Collins, Gerald N. Felando, Bill Filante, Nolan Frizzelle, Bev Hansen, Paul V. Horcher, David G. Kelley, Bill Lancaster, Stan Statham and Cathie Wright, and former State Assemblyman Charles Bader submit this brief, amici curiae, in support of respondents in No. 90-1912, having obtained the written consent of both petitioner and respondents to file this brief. The written consent has been filed with the Clerk.

INTEREST OF AMICI CURIAE

Amici are state and federal officeholders elected by the people of California who have a direct interest in this matter because, if Article XIIIA is held unconstitutional, amici will be required to remedy the resulting legal deficiencies. Governor Wilson will have a legislative responsibility to veto or sign into law any alternative property tax system designed by the California Legislature.

Amici believe they can offer the Court a unique perspective on Proposition 13 because it was the product of direct lawmaking through the initiative process. Amici believe Proposition 13 continues to enjoy the overwhelming support of the vast majority of Californians and that retention of Proposition 13 is in the best interest of California and all its citizens.

Amici have a direct interest in the outcome of this matter. If this Court invalidates Proposition 13, amici will have to redesign the state's system of public finance and attempt to ameliorate the resulting economic dislocation including considering alternatives to the current California property tax system.

SUMMARY OF ARGUMENT

When enacted in June of 1978, Proposition 13 envisioned a comprehensive system of property tax reform. The proponents of Proposition 13 believed that the prior system of taxation was unduly oppressive and burdensome. They argued that a property tax based on acquisition value would provide California's home owners with stability and predictability in property taxation. Proposition 13 is rooted in these rational and sensible considerations.

This brief illuminates the history of property taxes and property tax reform in California prior to the enactment of Proposition 13. This history illustrates that the public policy goals constituting the rational basis for Article XIIIA were reasonably related to the provisions

adopted and in no way involved the "Politically Expedient Attempt to Raise Revenue by Shifting the Overwhelming Burden of Property Tax Revenue Increases to Newcomers" as alleged by petitioner. Pet.Br. at 37.

This Court has respected interpretation of the California Constitution by California state courts. The California court of appeal held that Proposition 13 withstood petitioner's Equal Protection challenge and that *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, W. Va.*, 488 U.S. 336 (1989) did not deprive Proposition 13 of its constitutional viability. Proposition 13's purposes have been carefully scrutinized by the state's judiciary and been upheld as reasonably and rationally related to the legislative policies driving the reforms.

Petitioner's logic would have this Court establish that all property taxation must be based on current fair market value to be constitutional. Such an interpretation is without legal precedent and would establish new and far reaching limitations on the States' power to tax. In fact, in addition to sustaining many different bases for classification, this Court has previously sustained as constitutional the very classification distinctions drawn by Article XIIIA.

The cases decided by this Court clearly establish that a state may tax property on a basis other than its current fair market value. By overturning Proposition 13, this Court would be subsuming the legislative function and constitutional powers which the Tenth Amendment reserves to the State of California and to its people.

ARGUMENT

I. ARTICLE XIIIA CARRIES OUT A COMPREHENSIVE TAX LIMITATION SCHEME IMPORTANT TO CALIFORNIA AND IS RATIONALLY RELATED TO ITS PURPOSES.

A. Proposition 13 is a Comprehensive Scheme of Property Taxation.

Proposition 13, popularly known as the "Tax Limitation Initiative," was adopted by California's electorate on June 6, 1978. The initiative, described as "the most significant fiscal act of the people of California in modern times,"[1] added Article XIIIA to the California Constitution. No other constitutional initiative measure has caused so much change in California's governmental powers and programs.[2]

Petitioner challenges only Proposition 13's property assessment provisions. Pet.Br. at 2 n.1. However, the Equal Protection claim at bar cannot be properly evaluated unless it is viewed in context. Examination of Proposition 13's overall impact on California's property tax system is necessary to assess petitioner's Equal Protection challenge.

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[1] California Commission on Government Reform, *Final Report* 1 (Jan. 1979).

[2] Henke & Woodiief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F. L.Rev. 251, 253 (1988). *See also* Even, *Of Castles and Kings: A Perspective for Property Tax Reform*, 50 Mont.L.Rev. 243, 258 (1989) ("California's Proposition 13 stands out as the archetype of tax limitation measures nationwide.").

The California Supreme Court has stated that Proposition 13:

> [C]onsists of four major elements, a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4). Although petitioners insist that these four features constitute separate *subjects*, we find that each of them is reasonably interrelated and interdependent, forming an interlocking "package" deemed necessary by the initiative's framers to assure effective real property tax relief.

Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, 583 P.2d 1281, 1290 (Cal. 1978) (emphasis in original).[3]

Section 1 of Proposition 13 defined the property tax rate limit as 1 percent of the full "cash value" of real property. Cal.Const. art. XIIIA, § 1 (1978, amended 1986).

Section 2 rolled back the *assessed valuations* to the levels prevailing in 1975-76 and limited increases in property tax valuations to 2 percent per year until the property is "purchased, newly constructed, or a change in ownership" occurs after the 1975 assessment. Cal.Const. art. XIIIA, § 2 (1978, amended 1990).

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[3] Proposition 13 had two remaining sections. Section 5 determined Proposition 13's effective date and section 6 contained a severability clause which declared that if any section was held to be invalid or unconstitutional, the remaining sections would remain in full force. Cal. Const. art. XIIIA, §§ 5-6 (1978).

Section 3 requires that any changes in *state* taxes, whether by increased rates or change in methods of computation, be approved by two-thirds of all members elected to both houses of the Legislature. However, new *ad valorem* taxes on real properties are prohibited.[4] Cal.Const. art. XIIIA, § 3 (1978).

Section 4 requires a two-thirds vote in a special election before *local* governmental entities can impose special taxes. New *ad valorem* taxes on real property are again prohibited. Cal.Const. art. XIIIA, § 4 (1978).

Sections 1 and 2 are twin pedestals of Proposition 13's effective property tax relief. Limiting the tax rate alone would not have remedied the plight of property owners because the burden on homeowners before Proposition 13 was caused by increased *assessments*, not rising property tax *rates*. A rollback of assessments and caps on future increases in assessed valuation was also necessary because without section 2, local governments could still raise larger amounts of revenue from property taxes.[5]

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[4] Proposition 13's definition of *ad valorem* tax has been articulated by the California Supreme Court as "any source of revenue derived from applying a property tax rate to the assessed value of property." *Heckendorn v. City of San Marino*, 723 P.2d 64, 67 (Cal. 1986) (quoting Cal.Rev. & Tax Code § 2202 (1978)).

[5] "Since the total real property tax is a function of both rate and assessment, sections 1 and 2 unite to assure that *both* variables in the property tax equation are subject to control." *Amador Valley*, 583 P.2d at 1290-1291 (emphasis in original).

Sections 3 and 4 prevented circumvention of the fiscal constraints imposed by property tax limits. Section 3 assured that the Legislature would be restricted in its ability to raise state taxes. Section 4 completed the "package" by restricting the ability of local governments to raise local taxes, guaranteeing that property tax relief would not be offset by an increase in other local taxes.

In weighing Proposition 13 under the California Constitution's single subject requirement, the California Supreme Court succinctly summarized the interrelated nature of the initiative's provisions:

> [S]ince any tax savings resulting from the operation of sections 1 and 2 could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes. . . . [B]oth sections [3 and 4], in combination with sections 1 and 2, are reasonably germane, and functionally related, to the general subject of property tax relief.

Amador Valley, 583 P.2d at 1291.

California's voters thus approved Proposition 13 anticipating property tax relief from local government without offsetting tax increases from other levels of government.

B. Proposition 13's Historical Underpinnings Establish A Rational Motivation for California's Property Tax Reform.

The United States Constitution invalidates only governmental choices which are "clearly wrong, a display of

arbitrary power, not an exercise of judgment." *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976). The nature of the problem addressed by Proposition 13, and the collective judgment made by the electorate about the best method of tax reform, can best be understood by reviewing the history of California's property tax revolt.

In the summer of 1965, the *San Francisco Chronicle* published a series of newspaper articles describing the corruption of property tax assessors throughout the state. The articles described the escapades of elected assessors who had received "campaign contributions" to "review and adjust" assessments on business property. Levy, *On Understanding Proposition 13*, 56 Pub.Int. 66, 68 (1979).

Responding to the scandal, the California Legislature enacted the Petris-Knox bill in 1967. Cal.Rev.& Tax. Code § 401 (1967, amended 1980). The legislation required county assessors to reassess, within a three year period, all property at 25 percent of market value and required frequent reassessments to keep the ratio intact. Adjustment to a uniform 25 percent assessment ratio brought about a rapid increase in homeowner assessments.

Individuals quickly perceived that a shift in the property tax burden was occurring away from commercial and residential property onto single-family residential property. As time progressed and the price of single-family homes continued growing faster than the values of other properties, the general conclusion that homeowners were bearing an increasing percentage of total property taxes was supported by substantial statistics. Shapiro, Puryear & Ross, *Tax and Expenditure Limitation in Retrospect and in Prospect*, 32 Nat'l Tax J. 1 (Supp. June 1979).

Opposition to this swift escalation of the property tax fueled a series of tax reform initiatives. In response to increased homeowner's tax bills, Proposition 9, the "Watson Initiative," appeared on the November, 1968 ballot. It proposed a five-year plan to eliminate the use of property tax revenues to fund "people-related" services, such as education and welfare.[6] Proposition 9 would have limited property tax rates to one percent of market value. The ballot measure was defeated by a margin of two-to-one because it failed to guarantee a reduction in the overall level of government spending. Levy, *supra*, at 70.

In June of 1970, Proposition 8 provided Californians the opportunity to approve another tax-shift measure. Proposition 8 called for an expansion of the state homeowner exemption and increased the state funding for local welfare programs and education. However, Proposition 8 did not require local governments to maintain or reduce tax levies. Because it lacked an explicit protection against increased property taxes, the initiative received only 28 percent of the vote. *Id.* at 71.

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[6] The California Legislature, reacting to the campaign for Proposition 9, offered its own plan for property tax relief. The Legislature passed and placed on the ballot California's first homeowners property tax exemption which provided that the first $750 of assessed value of an owner-occupied home would be exempt from property taxation. Fifty-four percent of the voters supported the necessary constitutional amendment required to implement the Legislature's tax exemption. Act approved September 23, 1968, ch. 1, 1969 Cal.Stat. 7-8 (codified as amended at Cal.Rev.& Tax. Code § 218 (1987)). Levy, *supra*, at 70.

In 1972, the second "Watson Initiative" appeared on the November ballot as Proposition 14. Like Proposition 9 in 1968, Proposition 14 called for a limit on local property taxes and for a shift to state financing for most educational and welfare programs. Proposition 14 specified increases of the sales tax, cigarette tax, liquor tax, and the tax on corporate income. Proponents claimed these revenue increases would fund the expansion of state spending. Sensing a threat of higher state taxes, voters defeated Proposition 14 by a margin of three to one.[7]

Proposition 1 was offered in 1973 as a tax reform alternative which would explicitly limit state spending. Even though sponsored by Governor Ronald Reagan, Proposition 1 proved vulnerable to the arguments of opponents that any limit on state spending would force local governments to fund necessary services through the property tax. Proposition 1 received only 44 percent of the vote. Levy, *supra*, at 73.

While efforts at tax reform failed at the ballot box and in Sacramento, residential property values during the mid-1970's were skyrocketing. Between 1973 and 1977, housing prices in San Francisco and Los Angeles were

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[7] *Id.* at 72. In a reaction to the public's escalating tax reform fever, the California Legislature belatedly enacted an alternative to Proposition 14. The Property Tax Relief Act of 1972 raised the homeowner's exemption to $1,750, introduced a modest income-tax credit for renters, placed limits on city and county tax rates (later repealed in 1973), and placed limits on school-district expenditure levels. Smith, *Constitutional Reform Gone Awry: The Apportionment of Property Taxes in California After Proposition 13*, 23 Loy.L.A.L.Rev. 829, 837 nn. 56-59 (1990).

increasing at the horrific rate of 14 to 15 percent per year, a rate far outpacing the rest of the country. *Id.* at 73.

Yet California's property tax system prior to Proposition 13 kept assessed values and market values in a fixed ratio.[8] Many homeowners, especially in large urban areas, found their property tax bill increasing from 50 to 100 percent in a three to four year period. By May of 1978, the

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[8] According to one commentator, California's pre-Proposition 13 assessment practices raised the alarming specter of housing costs well above what families expected when they had purchased their home:

> Consider a family in Los Angeles that made $18,000 in 1973. At that time a typical home was financed at a 7 3/4-percent rate of interest for 25 years. Institutions required a 20-percent down payment and used a 25-percent rule of thumb: The sum of the monthly housing payment and property-tax payment should be less than 25 percent of gross monthly income. The combined Los Angeles tax rates for city, county, and Los Angeles Unified School District stood at about $12.25 per $100 of assessed valuation (and the first $1,750 of assessed valuation was tax exempt under [the Property Tax Relief Act of 1972]). Taking all these factors into account, a bank would have judged the family capable of purchasing a $47,500 home. The annual property-tax bill would have been slightly over $1,000 per year. By 1976, typical reassessments would have increased the family's annual property-tax bill by $730. By 1977, their tax bill would have risen by an additional $400 per year, a nominal tax increase of over 100 percent in four years!

Levy, *supra*, at 73-74.

Los Angeles County Assessor released fiscal year 1978-1979 assessments showing a 17.5 percent increase in residential values with some homes rising as much as 100 percent over their previous assessment levels. Lefcoe & Allison, *The Legal Aspects of Proposition 13: The Amador Valley Case*, 53 S.Cal.L.Rev. 173, 178 (1979). During the fastest period of price growth in California homes, from roughly 1973 to 1977, many homeowners received tax bills which were actually *triple* the previous year's bill. Oakland, *Proposition 13 – Genesis and Consequences*, 32 Nat'l Tax J. 387, 392 (Supp. June 1979).

The lingering crisis addressed by Proposition 13 was that Californians had already been consistently paying higher taxes relative to the rest of the United States. Only three states – Alaska, Massachusetts, and New Jersey – had higher per capita *property tax* burdens than California in the year before Proposition 13 was enacted. U.S. Bureau of the Census, *Government Finances in 1976-77*, at 64, table 25 (1978). Further, the relative burden of *all* state and local taxes placed California third in the nation exceeded only by New York and Alaska. The personal income of California residents lagged behind the increases of state and local tax collections both in California and the balance of the nation by a wide margin. Lefcoe & Allison, *supra*, at 176.

The property tax revolt which swept Article XIIIA into the California Constitution was a direct response to years of patient waiting for meaningful tax reform.

> During the 1960's, per capita property tax collections in California nearly doubled. The average annual rise of 7 percent materially outpaced

> the growth rate of the State's economy, as measured by per capita income (about 4.8 percent a year). Hence, total property tax revenue went up from $49 to $63 per $1000 of resident personal income during the decade; for fiscal 1970-71 that figure reached $67 per $1000. On a per capita basis, California paid the largest property tax bill in the nation, $296.

U.S. Advisory Comm. on Intergovernmental Relations, *The Property Tax in a Changing Environment: Selected State Studies* 57 (1974). Lefcoe & Allison, *supra*, at 176 n.12.

By the spring of 1977, California's taxation dynamo had generated a state budget surplus of $2.4 billion. Given a golden opportunity to respond to the public's clamoring for tax relief, the California Legislature dropped the ball. After disagreeing on a blueprint for property tax relief, the Legislature adjourned the 1977 session without passing a tax reform bill. Levy, *supra*, at 81-83.

Soon after the collapse of the 1977 legislative session, Howard Jarvis and Paul Gann began circulating signature petitions for what was to become Proposition 13 on the June, 1988 statewide ballot. Directing a volunteer organization on a budget of merely $28,000, Jarvis and Gann garnered over 1.2 million signatures (only 500,000 were needed to qualify the initiative for the ballot) in an astonishing one month's time. Lefcoe & Allison, *supra*, at 174.

On June 6, 1988, Proposition 13 was approved by a wide margin. The initiative received 64.8 percent of the

vote and carried fifty-five of the state's fifty eight counties which accounted for 95 percent of the state's population. California Secretary of State, *Statement of Vote* (Primary Election, June 6, 1978). By taking matters into their own hands, California's voters addressed a fiscal problem the California Legislature had proved incapable of solving.[9]

II. THIS COURT HAS CONSISTENTLY DEFERRED TO INTERPRETATION OF THE CALIFORNIA CONSTITUTION BY CALIFORNIA STATE COURTS.

The people of California have reserved the right to enact legislation through initiative. Cal.Const. art. IV, § 1 (1966). Certainly, the "voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 295 (1981). But, notwithstanding petitioner's attack on California's initiative process, this Court has exhibited significant deference to state judicial

[9] Smith, *supra*, at 832. Republican State Senator John V. Briggs told prospective voters that Proposition 13 should be supported because *"The Legislature will not act to reduce your property taxes*. As a Senator and Legislator for 11 years, I, like you, have been totally frustrated with the Legislature's failure to enact a meaningful property tax relief and reform bill." California Secretary of State, *California Voter's Pamphlet* 58 (June 6, 1978) (emphasis in original).

interpretation of law enacted by the people of California.[10]

In *Reitman v. Mulkey*, 387 U.S. 369 (1967), this Court considered a voter-approved amendment to the California Constitution. At issue was Proposition 14, enacted in 1964.[11] The California Supreme Court decided the initiative was unconstitutional because it gave state sanction to private racial discrimination. This Court deferred to the California Supreme Court acknowledging that court's superior "knowledge of the facts and circumstances concerning the passage and potential impact" of the initiative and the "milieu in which that provision would operate." *Reitman*, 387 U.S. at 378. The factors approved in *Reitman* are pertinent here:

> We affirm the judgments of the California Supreme Court. We first turn to the opinion of

[10] This Court has passed upon the constitutionality of California's popularly-enacted legislation on numerous occasions. *See, e.g., California v. Ramos*, 463 U.S. 992 (1983) (upholding the "Briggs Initiative," enacted in 1978); *Crawford v. Board of Education*, 458 U.S. 527 (1982); *Richardson v. Ramirez*, 418 U.S. 24 (1974) (upholding Proposition 7, enacted in 1972); *James v. Valtierra*, 402 U.S. 137 (1971) (upholding a voter-approved amendment to the California Constitution); and *Reitman v. Mulkey*, 387 U.S. 369 (1967).

[11] Proposition 14 provided in pertinent part that "Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses." *Reitman*, 387 U.S. at 371.

> that court in *Reitman*, which quite properly undertook to examine the constitutionality of [Proposition 14] in terms of its "immediate objective," its "ultimate effect" and its "historical context and the conditions existing prior to its enactment." Judgments such as these we have frequently undertaken ourselves. *But here the California Supreme Court has addressed itself to these matters and we should give careful consideration to its views because they concern the purpose, scope, and operative effect of a provision of the California Constitution.*

Reitman, 387 U.S. at 373-374 (citations omitted, emphasis supplied).

Crawford v. Board of Education, 458 U.S. 547 (1982) was an Equal Protection challenge to Proposition 1, an amendment to the California Constitution enacted in November of 1979.[12] In upholding the amendment prohibiting state courts from ordering mandatory pupil assignment or transportation unless a federal court would have the same authority under federal case law,[13] this Court deferred to both the electorate and the decision of the state court:

> In this case the Proposition was approved by an overwhelming majority of the electorate. . . .

[12] *Crawford* reached this Court in a similar procedural posture as the instant case. Review there was of a decision by the California Court of Appeal, *Crawford*, 170 Cal.Rptr. 495 (Cal.Ct.App. 1980), after denial of review by the California Supreme Court.

[13] Cal.Const. art. I, § 7(a) (1979).

> The purposes of the Proposition are stated in its text and are legitimate, nondiscriminatory objectives. In these circumstances, we will not dispute the judgment of the Court of Appeal or impugn the motives of the State's electorate.

Crawford, 458 U.S. at 545 (footnotes omitted).

Crawford's respect for the California Supreme Court's exegesis of its own state constitution illustrates this Court's traditional deference to the interpretation of state law by a state's highest court. *North Carolina v. Butler*, 441 U.S. 369, 376 n.7 (1979); *Ward v. Illinois*, 431 U.S. 767, 772 (1977).

The court of appeal below distinguished *Allegheny Pittsburgh* and held it was bound by the Equal Protection analysis of the California Supreme Court in *Amador Valley. Nordlinger v. Hahn*, 275 Cal.Rptr. 684 (Cal.Ct.App. 1990). Acceptance of the state taxation policies embodied in the California Constitution, as justified by California state courts, is warranted and appropriate here under this Court's judicial precedents.

III. PETITIONER ASSUMES FACTS NOT IN EVIDENCE AND MISCHARACTERIZES PROPOSITION 13'S OPERATION.

Petitioner assumes facts not in evidence and mischaracterizes the legal issues in *Allegheny Pittsburgh* by presuming in her second question that there is "no possibility of ever seasonably attaining rough equality in tax treatment." Under Article XIIIA, by reason of the fact that purchasers subsequent to petitioner in most instances have a higher assessed value relative to market

value than petitioner, petitioner has already achieved a partial equalization with all other properties in the aggregate and will, in fact, achieve "a rough equality in tax treatment" over time with all other properties of similar market value. As time progresses, petitioner's property will gain relative advantage over an increasing number of other properties changing ownership after her purchase until petitioner's property itself changes ownership, whereupon the cycle of equalization based on current market value will begin again.

Further, petitioner mischaracterizes Proposition 13's actual operation. Article XIIIA's change of ownership provisions are unique and do not fit within the factual mold of those cases wherein discrimination *within a single class* has been characterized as the "welcome stranger" doctrine.[14] From time to time properties of like current

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[14] Indeed, *Allegheny Pittsburgh*'s "aberrational enforcement policies" – advanced by petitioners as the paradigm of Proposition 13's application – is remarkably similar to California's traditional *ad valorem* tax assessment scheme *prior* to the adoption of Proposition 13:

First, both Webster County and pre-Proposition 13 California utilized continuous reassessment cycles to adjust *all* property in the jurisdiction, whether or not the property had been recently sold. *Allegheny Pittsburgh*, 488 U.S. at 338; Levy, *supra*, at 71.

Second, both systems assessed property within a fixed ratio of appraised value. Prior to Proposition 13, the Petris-Knox bill required California's county assessors to reassess all property at 25 percent of market value and to reassess regularly to maintain that ratio. Levy, *supra*, at 71. Webster County's assessor fixed the yearly assessments at 50 percent of appraised value. *Allegheny Pittsburgh*, 488 U.S. at 338.

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fair market value will be assessed at different values under an "acquisition value" system. However, the amount and degree of disparity "common" in California is not a matter of record in this case, and is unknown. Petitioner's study, which is not properly part of the record in this case, cannot be considered to prove anything "generally" or "commonly" and clearly cannot establish any specific amount of disparity in the future.

In contrast to California, all the "welcome stranger" cases involved a local property tax system where local government set the tax rate based on its budget and spread the commensurate property tax burden among properties based on assessed value. A "high" assessed value would, therefore, subsidize a "low" assessed value since assessed values were used to spread the predetermined property tax burden. However, Article XIIIA limits the power of local government to tax by limiting assessed values. Assessed values are not used to *spread* the burden. Assessed values collectively *determine* the burden.

Under Proposition 13 no property "subsidizes" any other.

Equally without merit is petitioner's conclusion that, "These annual real tax cuts for long-time owners are

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Finally, a single property owner in Webster County and pre-Proposition 13 California, fortunate enough to obtain an inflation-enhanced price for property, triggered an areawide adjustment based on "some perception of the general change in property values" by the local county assessor. *Id.* at 343.

subsidized entirely by new buyers who must pay an enormous percentage of the annual increases in overall property tax revenues," Pet.Br. at 8 (emphasis supplied). Petitioner also claims that newcomers "must bear a vastly disproportionate share of future tax revenue increases," Pet.Br. at 14, and that Proposition 13 "bestows its lowest effective tax rates on the community's wealthiest citizens." Pet.Br. at 7.

Petitioner's conclusions as to a subsidy of one group by another are premised on a very critical and invalid assumption – that somehow there would be a reduction in the taxes paid by so called "newcomers" if only Proposition 13 was eliminated and all property assessed on current market value.

However, pre-Proposition 13 property tax law is still in place and will become operative again if the provisions of Article XIIIA which limit assessed value to acquisition value are invalidated. Cal.Const. art. XIII, §§ 1(a) and (b) (1974). All properties would be taxed on current fair market value but with no commensurate reduction in the rate of tax. The only beneficiary of eliminating Proposition 13 would be higher taxes overall and more revenue for local government. Neither short time nor long time property owners will benefit from overturning Proposition 13.

Petitioner's assumption that one group is subsidizing another is purely erroneous since Proposition 13 limits the amount of money local government may exact from the property tax. Any loosening or elimination of Proposition 13's limitations automatically increase the property

tax yield to local government. None of any tax increase will necessarily go to reduce any other taxpayer's tax. *Id.*

IV. THE POWER TO TAX OR CLASSIFY IS RESERVED TO THE STATES BY TENTH AMENDMENT.

The power of the States to effect significant social and economic policy through tax classifications is reserved to the States by the Tenth Amendment. This power is absolute except as abridged by the Constitution itself and federal law and treaties lawfully enacted pursuant to the Constitutional powers of the United States. *Buffington v. Day,* Mass. 1871, 78 U.S. 113, 124 (1870).

Reconciliation of the power of the States to tax under the Tenth Amendment with the word "equal" in equal protection under the Fourteenth Amendment has been the subject of numerous cases. The reconciliation of this conflict in semantics by this Court has been well stated by commentators:

> [The United States Supreme Court] has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification.
>
> The essence of that doctrine can be stated with deceptive simplicity. The Constitution does not require that things different in fact be treated in law as though they were the same. But it does require, in its concern for equality, that those who are similarly situated be similarly treated. The measure of the reasonableness of a classification is the degree of its

success in treating similarly those similarly situated.

Tussman and tenBroek, *The Equal Protection of the Laws*, 37 Cal.L.Rev. 341, 344 (1949) (footnotes omitted).

V. STATES MAY TAX PROPERTY ON OTHER THAN FAIR MARKET VALUE.

A. Petitioner's Logic, Which Compels All Property Taxation to be Based On Only Fair Market Value, is Without Legal Support.

Petitioner states that the Equal Protection requirement is the "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." Pet.Br. at 17. Petitioner offers disparities between properties based on current market values and implies that the only comparison as to what properties are "similarly situated" must be based on current fair market value. Petitioner's argument, therefore, is that the California property tax system must achieve equalization on current fair market value to satisfy Equal Protection.

On the one hand petitioner accepts predictability as a legitimate public policy goal justifying a tax classification. Pet.Br. at 36. Petitioner contends that California could have fixed everyone's value "as of the same year" to achieve predictability and still avoid constitutional infirmity. Pet.Br. at 36. On the other hand, petitioner concedes that properties have and will appreciate at different rates throughout California. Pet.Br. at 7, para. 2.

Based on petitioner's admissions, her alternative to achieve predictability fails under her own Equal Protection illogic. *Both* an acquisition value system and petitioner's "same year" system would, over time, create disparities in assessed values when compared to current market values. Such differences in appreciation, where all assessed values are fixed for all time "as of the same year" would create nearly as many disparities as are alleged to exist under the Proposition 13 system. As time passed and some properties appreciated much more than others (perhaps with some depreciating) petitioner's system would fail to meet her own test of "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." In fact, the only system which would not fail under petitioner's test is one based on continuous reappraisal at current fair market value – a system that cannot accommodate the admittedly legitimate public policy goal of predictability.

Petitioner misunderstands the meaning of "similarly situated" taxpayers. Two identical 2500 square foot homes on identical sized lots in different locations are "similarly situated" in one very important respect, their size. Yet under a current fair market value system their property taxes may vary widely. It is not a denial of Equal Protection to tax these same sized homes differently because the law under which we determine whether properties are "similarly situated" establishes a comparison based on "current market value." Likewise, there are many taxes using "size" to distinguish the class. In many states, property tax on boats or vessels depends on size. In California and elsewhere literally hundreds of special

assessments for fire control districts, flood control districts, etc., are based on the parcel's square footage or its improvements irrespective of current market value. Clearly these are not all unconstitutional because they are not uniformly based on "current fair market value."

"Similarly situated" is a descriptor of the one similarity out of the many possible similarities singled out in law as the distinguishing comparative. "Seasonable attainment of rough equality" is merely equality based on the criteria of comparison established by state law, whether it be "current market value," "square footage" or "acquisition value." It is not unconstitutional to tax properties differently that are identical on one basis of comparison where they are treated the same on another basis. The "acquisition value" of a property is no less valid a basis of comparison than a property's current fair market value, or its size, or the use to which it is put, or the nature of the person or entity owning it. As set forth below, all these distinctions have been sustained by this Court.

Petitioner considers Proposition 13, which simply establishes a basis of comparison different than fair market value, as unfair. But that is a political judgment which is not equivalent to the legal conclusion that distinguishing properties for tax purposes based on "acquisition value" is a denial of Equal Protection.

No decision by this Court establishes the strict requirement petitioner seeks to impose. On the contrary, the power of the States to classify for tax purposes is very broad. This Court and lower federal courts have sanctioned numerous tax classifications based on any number

of distinctions.[15] Also, this Court has sustained distinguishing individuals from corporations or partnerships with regard to the same property.[16] Such distinctions have been held constitutional even though the entities being distinguished directly compete with one another.[17]

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[15] This Court and lower federal courts have sanctioned distinctions based on geography, *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D. Ala. 1971); distinctions based on the nature or use to which property is put, such as differences in the operations of common carriers, *Dixie Ohio Express Co. v. State Rev. Comm'n*, 306 U.S. 72 (1939), *Aero Mayflower Transit Co. v. Board of R.R. Comm'rs*, 332 U.S. 495 (1947), *Bekins Van Lines v. Riley*, 280 U.S. 80 (1929); differences in what is being transported, *Alward v. Johnson*, 282 U.S. 509 (1931); differences in vehicle use and weight, *Coyne v. Prouty*, 289 U.S. 704 (1933); differences in what natural resource is being extracted or produced, *Lake Superior Consol. Iron Mines v. Lord*, 271 U.S. 577 (1926); differences in whether property is real property, tangible personal property or intangible property, *Klein v. Board of Tax Supervisors*, 282 U.S. 19 (1930); differences based on agricultural versus nonagricultural use, *Clark v. Kansas City*, 176 U.S. 114 (1900); differences in leased versus owned property, *Illinois Central Railroad Co. v. Minnesota*, 309 U.S. 157 (1940); differences in bank charters, *Union Bank & Trust Co. v. Phelps*, 288 U.S. 181 (1933), *Commercial Bank v. Chambers*, 182 U.S. 556 (1901); differences in the purposes for storing merchandise within a state, *Allied Stores v. Bowers*, 358 U.S. 522 (1959), and *Youngstown Sheet & Tube Co. v. Bowers*, 358 U.S. 534 (1959).

[16] *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Barrett v. Shapiro*, 411 U.S. 910 (1973); *Lawrence v. State Tax Comm.*, 286 U.S. 276 (1932); *White River Lumber Co. v. Arkansas*, 279 U.S. 692 (1929); *New York v. Barker*, 179 U.S. 279 (1900).

[17] *Puget Sound Power & Light Co. v. Seattle*, 291 U.S. 619 (1934).

Additionally, disproportionate exactions of tax revenues from certain individuals that pay for programs that benefit other than those taxed have also been found not to offend the Equal Protection Clause.[18]

B. This Court Has Specifically Sustained A Property Tax Classification Based on Other Than Fair Market Value.

In *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania*, 134 U.S. 232 (1890), Pennsylvania (similar to Article XIIIA) levied an annual tax of three mills on each dollar of par or nominal value of corporate bonds and securities and also levied an annual tax of three mills on the fair market value of all other moneyed securities. *Id.* at 234. In that case, petitioners argued that this classification system violated the Equal Protection Clause because "the nominal value of the bonds is not their real value. . . . " *Id.* at 235-236.

The United States Supreme Court however concluded that Pennsylvania's law:

> [D]oes not make any discrimination . . . which the State is not competent to make. All corporate securities are subject to the same regulation. . . . We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. . . .
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> . . . .

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[18] *See, e.g., Fox v. Standard Oil Co.*, 294 U.S. 87 (1935); and *Dane v. Jackson*, 256 U.S. 589 (1921).

> With due regard to these considerations, we are clearly of opinion that the method of assessing the tax in question, on the face value of corporate securities in Pennsylvania, is not violative of the Fourteenth Amendment to the Constitution.

Bell's Gap, 134 U.S. at 237-238.

The "face value" versus "current market value" conflict of *Bell's Gap* is essentially the same conflict confronting this Court, between "acquisition value" and "current market value," in this case. From as early as *Bell's Gap* in 1890 to the present, nothing has occurred to change the deference shown by this Court to the States in permitting tax classifications.[19] In 1974, more than 80 years after *Bell's Gap* and after many similar decisions in between, this Court stated, "A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. *This principle has weathered nearly a century of Supreme Court adjudication. . . .* " *Kahn v. Shevin*, 416 U.S. 351, 355-356 (1974) (citation omitted, emphasis supplied).

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[19] It is clear that an acquisition value system was approved by the electorate. The non-partisan Legislative Analyst noted that Proposition 13's assessment provisions would be "set at the appraised (or market) value *at the time of sale or construction.*" *California Voter's Pamphlet, supra*, at 57 (emphasis supplied). Further, the official title and summary prepared by the California Attorney General stated Proposition 13 "[p]rovides for reassessment after sale, transfer, or construction." *Id.* at 56.

VI. *ALLEGHENY PITTSBURGH* IS AN EQUAL PROTECTION "REMEDY" CASE NOT APPLICABLE TO ARTICLE XIIIA's "CLASSIFICATION" ISSUE.

There is no legal similarity between Article XIIIA's change of ownership provision and *Allegheny Pittsburgh*, relied upon heavily by petitioner. *Allegheny Pittsburgh* is best characterized as an Equal Protection *remedy* case. There the West Virginia Supreme Court of Appeals refused to redress an *intraclass* discrimination and left the taxpayer to force up the low assessments of others to achieve state mandated equality.

Allegheny Pittsburgh involved a clear aberrational, intentional and systematic undervaluation of property within a single class by a state official in conflict with West Virginia's constitutionally mandated equality within that class. This distinction is made clear by this Court in the first sentence of its opinion: "The West Virginia Constitution guarantees to its citizens that, with certain exceptions, 'taxation shall be equal and uniform throughout the State, and *all property, both real and personal, shall be taxed in proportion to its value. . . .* ' W.Va. Const., Art. X, § 1." *Allegheny Pittsburgh*, 488 U.S. at 338 (emphasis supplied).

Further, petitioner mischaracterizes the decision. In *Allegheny Pittsburgh* this Court clearly did not hold that the West Virginia *"classification scheme"* violated "the Equal Protection Clause." Pet.Br. at 27 (emphasis supplied). The West Virginia fair market value "scheme" was and is constitutional. It was West Virginia's failure to grant a remedy for a violation of equalization required

under that "scheme" that prompted the decision in *Allegheny Pittsburgh*.[20]

VII. PETITIONER'S ARGUMENT CONSTITUTES A PUBLIC POLICY OBJECTION RATHER THAN A CONSTITUTIONAL INFIRMITY.

Petitioner's argument, including her side-by-side property examples, and alleged statistics, simply rise to the level of a public policy objection and no higher. The legal essence of petitioner's case is that because two individuals share one element of commonality (they own

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[20] This Court stated: "The Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.'" *Allegheny Pittsburgh*, 488 U.S. at 343 (quoting *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 190 (1945)). Further:

> In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.'
>
> But West Virginia has not drawn such a distinction. Its Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value.

Allegheny Pittsburgh, 488 U.S. at 344-345 (quoting *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573 (1910)). Finally, "We granted certiorari to decide whether these . . . assessments denied petitioners the equal protection of law and, if so, whether petitioners could constitutionally be limited to the remedy of seeking to raise the assessments of others." *Allegheny Pittsburgh*, 488 U.S. at 342.

properties of equal value), no tax classification may be made which distinguishes individuals on the basis of another important common element (acquisition price). If petitioner's logic is a constitutional Equal Protection requirement, then very few tax classifications can survive.[21]

It is well established that, regardless of the equitable appeal or lack thereof of petitioner's tax policy entreaties, this Court should not subsume the function of the California Legislature and interpose the policy judgment of petitioner for that of California's voters as to what is "fair and proper" tax classification policy. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 40-41 (1973). *See also Regan v. Taxation with Representation of Washington*, 461 U.S. 540 (1983); *Madden v. Kentucky*, 309 U.S. 83 (1940).

CONCLUSION

For the foregoing reasons, amici curiae urge this Court to affirm the decision of the Court of Appeal of the State of California, Second Appellate District.

Dated: January 31, 1992

Respectfully submitted,

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[21] To the contrary, see the cases cited *supra* note 15.